IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 843 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASHYAP DHIMANPRASAD BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 843 of 1986

MR PM THAKKAR for Petitioner No. 1

MR SUDHANSHU PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/03/2002

ORAL JUDGEMENT

1. Heard ld. Senior Counsel Mr. P.M.Thakkar for the appellant Accused. The appellant-accused has challenged the judgment and order of conviction and sentence dated 21.6.1986 passed by ld. Special Judge,

Nadiad in Special Case No. 2/86. Vide impugned judgment, the appellant accused has been held guilty for the offences punishable under Section 161 of IPC and also under Sections 5(1)(d) R/w S.5(2) of the Prevention of Corruption Act (Old Act) (hereinafter referred to as the Act) and has been sentenced to suffer R/I for 1 Year and fine of Rs.1000/, I/d R/I for three months for each offence. It was also ordered that the sentence of R/I to run concurrently.

2. The impugned judgment has been challenged on number of grounds mentioned in the memo of appeal, but during the course of oral submissions, ld. Sr.Counsel Mr. Thakkar has concentrated on the point of sanction and has submitted that if this Court is satisfied that there was no legal or valid sanction to prosecute the present appellant in view of Section 6 of the Act, then the present appeal should be allowed and appellant accused should be acquitted without going into merits of other contentions raised in the appeal. Placing reliance on the decision of the Apex Court in the case of Ram Krishna Prajapati v/s State of U.P. reported in 2000 SCC (Cri.) P. 687, he has submitted that even the Apex Court has not gone into the merits of the matter and held that for want of sanction, the ld. Special Judge ought not to have taken cognizance of the offence at all. The Apex Court, therefore, without going into the merits of the matter, allowed the appeal and quashed and set aside the impugned judgment and order of conviction recorded against the appellant.

3. At the relevant time i.e. at the time of alleged commission of crime, the present appellant was serving as PSI with police force of State of Gujarat and on 11.2.1985, he was caught in ACB trap while accepting Rs.800/ as illegal gratification from the complainant. To appreciate the case of the prosecution, it would be proper to quote the charge (exh.6) framed by the ld. Special Judge which is as under :-

" That on 11.2.1985, you were on duty as Police Sub Inspector at Attarsumba Police Station when there was an application for breach of peace against Kamleshbhai, the brother of Natubhai Shankarbhai Patel, the complainant of this case and other two persons and to save them from the same, you demanded an illegal gratification of Rs. 1500/ from the complainant on 12.2.1985 and settled the same for Rs.1000/ and on 13.2.l1985 at about 12.00 noon, you demanded and accepted an amount of Rs.200/ towards the said amount and informed the complainant to pay the remaining amount of Rs. 800/ on 14.2.1985 at 10.00 to 11.00 a.m. at your residence at village

Attarsumba and the complainant not desiring to pay the said illegal gratification, he gave complaint about the same to Police Inspector; ACB, Nadiad, on 13.2.1985 at 18.45 hours and a trap for the same was arranged and in the said trap on 14.2.1985 at 10.15 hours you demanded the remaining amount of Rs.800/ of the illegal gratification from the complainant and accepted the same and thereby you misconducted yourself as a public servant and obtained gratification other than legal remuneration and thereby you committed an offence punishable under Section 161 of the I.P.Code and within my cognizance;

Further, on the same day, time and place, i.e. on 14.2.1985 at village Attarsumba and in the above referred circumstances, you accused misused your position as a public servant and accepted an amount of Rs. 800/ being illegal gratification other than legal remuneration and thereby you committed an offence punishable under Section 5(1)(d) read with 5(2) of the Prevention of Corruption Act and within my cognizance.

And I hereby direct that you be tried by me for the aforesaid offence. "

4. Ld. Sr.Counsel Mr. Thakkar has pointed out that the appellant was appointed as PSI vide order dated 9.7.1983 which is at page-32. It is not a matter of dispute that he was appointed by Additional Inspector General of Police, State of Gujarat, Gandhinagar Range, Gandhinagar. At the time of alleged incident, he was serving in Kheda district. Sanction to prosecute the present appellant has been granted by the Deputy Inspector General of Police (DIG for short). Ld. APP Mr. Sudhanshu Patel has pointed out that as per Police Manual, DIG is the Disciplinary Authority as reflected in Para-34 of Chapter-II of Gujarat Police Mannual. Chapter-II deals with recruitment, appointment, probation, confirmation and seniority of police officers working in the police force of State of Gujarat. It is submitted that in view of this settled position, ld. PP defending the State before the trial Court, had not argued vehemently the point of validity of sanction granted by DIG permitting the investigating agency to prosecute the present appellant. He has brought to the notice of this Court para-40 of the judgment, which is reproduced herein below:-

"40. Before filing the chargesheet in this Court, the case-papers were sent to the Competent

> Authority for sanction to prosecute the accused. In this connection, the sanction has been given by the Deputy Chief Police Officer, Shaurashtra (South Division), Junagadh, which is produced at Exh.34. The accused was questioned about the same but he has not challenged the validity of the same. Mr. R.J. Trivedi, the ld. Advocate for the accused, has also not challenged the same before me. I, therefore, do not enter into the validity of the said sanction."

5. According to Mr. Sudhanshu Patel, ld.APP, the point of validity of sanction was not seriously pressed and, therefore, the appellant accused should not be put to any advantage. It also can be held that the accused has accepted that the sanction granted by DIG has not resulted into any prejudice to the appellant. DIG, undisputedly, as per the scheme of Police Mannual, is appointing authority as well as Disciplinary Authority so far as Police Sub Inspectors working with the police force of State of Gujarat are concerned. Mr. Patel has also pointed out that while replying two positive questions asked by the ld. Special Judge to the accused when his further statement was being recorded under Section 313 of CrPC, he has not stated that sanction granted by DIG is illegal or invalid.

6. I have considered the totality of the facts and circumstances of the case available on record in reference to para-40 of the judgment reproduced herein above. The appellant when was appointed as PSI, he was appointed by Addl. IGP. As admitted by the investigating officer who has chargesheeted the present appellant, during his cross-examination, the post of Addl. IGP is higher to the post of DIG. It is not on record that the papers of investigation were ever sent to the Addl.IGP - appointing authority of the appellant accused. DIG may be having authority and powers to appoint PSI or to promote anybody to the post of PSI, but so far as the present appellant is concerned, he was not appointed by DIG at the relevant point of time. It seems that in the year 1983, Addl.IGP was the appointing authority and, therefore, entire bunch of officers who were appointed at that relevant point of time, are appointed by Addl.IGP, Gandhinagar Range, Gandhinagar. The back-bone of the submissions made by ld. Senior Counsel Mr. Thakkar is that there is nothing on record by which it can be inferred that validity of sanction was never disputed before the trial Court. On the contrary, asking of a positive question to the Investigating Officer indicates that this part was brought to the notice of the Investigating Officer. The appellant

accused has shown his ignorance stating that he is not aware about the communication which has taken place between the investigating officer and the office of DIG of concerned Range. Such ignorance shown by the appellant accused while replying a particular question cannot be equated with the admission. On such answer, the trial Court ought not to have recorded in para-40 of the judgment that the accused has not challenged the validity of sanction. Validity of the sanction has to be established by prosecution. As per the settled legal position, the prosecution should show that sanction contemplated under Section 6 of the Act R/w Article 311 (1) of the Constitution of India, has been obtained.

7. In the case of R.J.Singh Ahluwalia v/s State of Delhi, reported in AIR 1971 SC 1552, the appellant sought permission from the Apex Court for the first time to raise new point i.e. legality and validity of sanction and the Apex Court has said that " this ground of challenge had, of course, not been raised in either of the two courts below but since it went to the root of the case, being a jurisdictional point, we considered it just and proper to allow it to be raised." This is not a case where validity of the sanction was not disputed before the trial Court. It is rightly submitted that a positive evidence has been brought on record during the course of cross-examination of investigating officer, but the same has not been considered in proper perspective and the finding recorded in para-40 of the judgment is based on an erroneous notion. It would be proper to reiterate the ratio propounded by the Apex Court in the case of Ram Krishna Prajapati (supra), where the sanction to prosecute was obtained and it was argued that the sanction has not been given by the competent authority. The appellant accused, in fact, was appointed by the Commissioner, who was admittedly a higher authority than the District Magistrate. It has been held by the Apex Court that the appellant is entitled to contend that sanction to prosecute him in the case should have been given by the Commissioner and not by the District Magistrate. Merely because, District Magistrate had also authority to appoint or to pass promotion orders, would not put him in the status of a person who had appointed the appellant accused. The Apex Court, in paras 8 & 9 of the decision, has said;

"8. The position is now clear that even though the District Magistrate was also an appointing authority, as the appellant was in fact appointed by the Commissioner, who is admittedly a higher authority than the District Magistrate, the Commissioner is the appointing

authority so far as the appellant is concerned.

9. If that be so, the appellant is entitled to contend that the sanction to prosecute him in this case should have been passed by the Commissioner and not by the District Magistrate. The sanction issued by the District Magistrate is not a sanction in the eye of the law as the said authority was incompetent to accord sanction for prosecution under the Act concerning the appellant."

7. In view of aforesaid decision, it would not be necessary to refer to the decision of this Court reported in the case of Gopalbhai Mohanbhai Nagoda v/s State of Gujarat, reported in 1993(2) GLR 1238 (D.B.), but as the facts of the said case as well as ratio propounded by the Division Bench of this Court being relevant, it would be proper to quote the ratio propounded as the same is propounded by referring various decisions of the Apex Court including the decision in the case of Krishna Kumar v/s The Divisional Assistant Electrical Engineer, Central Railway and Ors., reported in AIR 1979 SC 1912. In para-23 of the judgment in Gopalbhai Nagoda's case (supra), This Court has said;

"23. In view of the aforesaid authorities on the subject it is clear that a person cannot be removed from service by the authority who is subordinate in rank. Thus, in view of this, a person can be removed only by an appointing authority or an equivalent authority possessing the same power to that of the appointing authority. However, in case, the authority subordinate in ran can remove or dismiss a person and if he causes or exercises such power, it is in patent violation of the provisions of the Art.311(1) of the Constitution of India. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at the point of time that the constitutional guarantee under Article 311(1) become available. The subsequent authorisation made in favour of the authority passing the order of removal in regard to making appointments to the post held by the appellant cannot confer upon him the power to remove him. In the instant case also the appointment of the appellant has been made by the District Development Officer on 21.7.1965 and it is undisputedly Deputy District Development Officer who is subordinate in rank to the District Development Officer, in the instant

case could not have granted sanction because appointment was made by the District Development Officer. Even though the Deputy District Development Officer was holding the power of appointment (not brought on record), he cannot be termed as appointing authority in view of the facts that the appellant was appointed by District Development Officer who is undisputedly higher in rank to that of Deputy District Development Officer. In this view of the matter, we have to hold that the sanction granted by the Deputy District Development Officer in the instant case be termed as invalid sanction. The prosecution initiated against the appellant must fail for want of proper sanction."

8. The ratio of the decision of the Apex Court in the case of Sampuran Singh v/s State of Punjab, AIR 1982 SC 1407 would also help the present appellant. In para-11 of the said decision, the Apex Court, after referring to settled legal position of law, held;

"11. There is no quarrel with the propositions of law laid down in that case, but the question for determination here is who is the sanctioning authority within the meaning of S.6(1)(c) of the Prevention of Corruption Act, 1947. S.6(1)(c) stipulates that the removing authority will be the sanctioning authority. In view of Article 311(1) of the Constitution, the removing authority cannot be subordinate in rank to the appointing authority. By necessary implication the removing authority may be higher in rank to the appointing authority."

9. It has been submitted by ld. APP Mr. Sudhanshu Patel that this Court should observe that after obtaining sanction from the competent authority namely Addl. IGP, fresh prosecution can be launched against the appellant accused, as normally when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. However, in the instant case, in view of the ratio propounded by the Apex Court in this regard in the case of Mansukhlal Vithaldas Chauhan v/s State of Gujarat, AIR 1997 SC 3400, after a lapse of about 17 years, it would not be fair and just to direct accordingly so as to expose the appellant to another innings of litigation and keep him on trial for an idenfinitely long period which is contrary to the mandate of Article 21 of the Constitution, which is also a part of right to life philosophizes early end of

criminal proceedings through speedy trial. Hence, I am not inclined to accept the aforesaid submission canvassed by ld. APP Mr. Patel.

10. For the reasons aforesaid, appeal is allowed. Impugned judgment and order of conviction and sentence dated 21.6.1986 passed by ld. Special Judge, Nadiad in Special Case No. 2/86 whereby the appellant accused has been held guilty for the offences punishable under Section 161 of IPC and also under Sections 5(1)(d) R/w S.5(2) of the Prevention of Corruption Act and has been sentenced to suffer R/I for 1 Year and fine of Rs.1000/, I/d R/I for three months for each offence and also ordered the sentence of R/I to run concurrently, is hereby quashed and set aside and appellant accused Kashyap Dhimanprasad Bhatt is hereby acquitted of the offences for which he is convicted, fine, if paid, be refunded to the appellant accused. Appellant accused being on bail, his bail bonds stand discharged.

Yadi to the concerned Court.

15.3.2002 [C.K. BUCH, J]

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